

SUPREME COURT OF FLORIDA

Kimbrough v. State

886 So. 2d 965 (Fla. 2004) · No. Nos. SC02-1158, SC03-228 · Decided June 24, 2004

SUMMARY

The Supreme Court of Florida affirmed the denial of Darius Mark Kimbrough’s motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 and denied his petition for a writ of habeas corpus. The court addressed claims that trial counsel was ineffective for failing to obtain and present mental-health mitigation and expert assistance under Ake v. Oklahoma. It concluded that the record supported the circuit court’s rulings.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Chief Justice Anstead; Justice Wells; Justice Pariente; Justice Lewis; Justice Quince; Justice Cantero; Justice Bell
JURISDICTION	Florida
DECIDED	June 24, 2004
DOCKET	Nos. SC02-1158, SC03-228
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kimbrough appealed the denial of his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief and petitioned the Supreme Court of Florida for a writ of habeas corpus.
STANDARD OF REVIEW	Ineffective-assistance claims present mixed questions of law and fact subject to plenary review, with deference to the postconviction court's factual findings and independent review of its legal conclusions. Summary denial of a Rule 3.850 claim is proper when the claim is facially invalid or conclusively refuted by the record; otherwise, factual allegations not refuted by the record are accepted and an evidentiary hearing is required.
PRECEDENTIAL VALUE	precedential
PARTIES	Darius Mark Kimbrough v. State of Florida

TOPICS

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ineffective assistance

habeas corpus

competency to be executed

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PRACTICE AREAS

capital postconviction litigation

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QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by failing to call mental-health experts during the penalty phase under *Ake v. Oklahoma*.
2. Whether trial counsel rendered ineffective assistance by failing to provide mental-health experts with sufficient background material.
3. Whether trial counsel was ineffective for failing to present available statutory and nonstatutory mitigating evidence.
4. Whether the circuit court properly summarily denied claims alleging ineffective assistance concerning the examination of a State expert's credentials, rehabilitation of a prospective juror, investigation of a juror's connection to the Florida Department of Law Enforcement, and failure to seek a mistrial after improper prosecutorial closing argument.
5. Whether Florida's capital-sentencing scheme was unconstitutional under *Apprendi v. New Jersey* and *Ring v. Arizona*.
6. Whether Kimbrough's claim that he might be incompetent to be executed was ripe for review.

HOLDINGS

1. Counsel's strategic decision not to call Dr. Mings or Dr. Berland during the penalty phase, after weighing potentially helpful mitigation against the risk of damaging testimony and cross-examination, was a reasonable trial tactic and did not constitute deficient performance.
2. Kimbrough failed to establish deficient performance or prejudice based on the alleged failure to provide Mings and Berland with sufficient background information.
3. Kimbrough failed to prove ineffective assistance based on counsel's failure to present the additional statutory and nonstatutory mitigators identified by Dr. Mosman.
4. The circuit court properly summarily denied claims two, four, six, seven, and eighteen because the allegations were conclusory, procedurally barred, conclusively refuted by the record, or failed to allege facts demonstrating deficient performance and prejudice.
5. The court rejected Kimbrough's claim that Florida's death-penalty scheme was unconstitutional under *Apprendi* and *Ring*, relying on its prior decisions declining to find the scheme unconstitutional and noting that the prior-violent-felony aggravator independently satisfied constitutional requirements.
6. Kimbrough's claim that he might be incompetent to be executed was not ripe because Florida law did not permit the issue to be raised until the Governor issued a death warrant.

KEY QUOTATIONS

“The strategic decision Cashman and Sims made not to have Mings and Berland testify at trial was a reasonable trial tactic and did not constitute deficient performance.” (980)

“Kimbrough's concession that this issue is not yet ripe is accurate. Accordingly, this claim is without merit.” (984)

FACTUAL BACKGROUND

Kimbrough was convicted of murdering Denise Collins, whose body was found nude and seriously injured in her apartment. The prosecution presented eyewitness identifications, ladder-related evidence, DNA evidence linking Kimbrough to semen and blood at the scene, and medical evidence of blunt-force trauma and sexual assault. Kimbrough was nineteen at the time of the crime, and the sentencing court found three aggravating circumstances while rejecting statutory age mitigation and finding that the available nonstatutory mitigation did not outweigh the aggravators.

PROCEDURAL HISTORY

Kimbrough was convicted of first-degree murder and sentenced to death. The Supreme Court of Florida affirmed the conviction and sentence on direct appeal. He later filed a Rule 3.850 motion raising twenty claims; after an evidentiary hearing on three claims, the circuit court denied all relief. The Supreme Court of Florida reviewed the denial of claim nineteen, the summary denial of claims two, four, six, seven, and eighteen, and Kimbrough's habeas claims, affirming the postconviction order and denying habeas relief.

DISPOSITION

affirmed

CASES CITED

- Kimbrough v. State, 700 So. 2d 634, 635-36 (Fla. 1997)
- Ake v. Oklahoma, 470 U.S. 68, 83 (1985)
- Strickland v. Washington, 466 U.S. 668, 687, 689 (1984)
- Stephens v. State, 748 So. 2d 1028, 1033 (Fla. 1999)
- Ragsdale v. State, 798 So. 2d 713, 716, 718-719 (Fla. 2001)
- Cherry v. State, 781 So. 2d 1040 (Fla. 2000)
- Asay v. State, 769 So. 2d 974, 986, 988 (Fla. 2000)
- Jones v. State, 732 So. 2d 313, 320 n. 5 (Fla. 1999)
- Correll v. Dugger, 558 So. 2d 422, 426 (Fla. 1990)
- Griffin v. State, 866 So. 2d 1, 9 (Fla. 2003)
- Ferguson v. State, 593 So. 2d 508 (Fla. 1992)
- State v. Bolender, 503 So. 2d 1247, 1250 (Fla. 1987)
- Peede v. State, Peede v. State, 748 So. 2d 253, 257 (Fla. 1999)

- Gaskin v. State, 737 So. 2d 509, 516 (Fla. 1999)
- Roberts v. State, 568 So. 2d 1255, 1259 (Fla. 1990)
- Wainwright v. Witt, 469 U.S. 412, 424 (1985)
- Reaves v. State, 826 So. 2d 932 (Fla. 2002)
- Maharaj v. State, 684 So. 2d 726 (Fla. 1996)
- Sireci v. State, 469 So. 2d 119, 120 (Fla. 1985)
- Spencer v. State, 645 So. 2d 377, 383 (Fla. 1994)
- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- Ring v. Arizona, 536 U.S. 584 (2002)
- Bottoson v. Moore, 833 So. 2d 693 (Fla. 2002)
- King v. Moore, 831 So. 2d 143 (Fla. 2002)
- Doorbal v. State, 837 So. 2d 940 (Fla. 2003)
- Cole v. State, 841 So. 2d 409, 430 (Fla. 2003)
- Brown v. Moore, 800 So. 2d 223, 224 (Fla. 2001)

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